

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7162 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MARK LABORATORIES

Versus

STATE OF GUJARAT

-----  
Appearance:

MR AJ PATEL for Petitioners  
Mr AG Uraizee, AGP, for Respondent No. 1  
MR JAYESH M PATEL for Respondent No. 2  
MR BG PATEL for Respondent No. 3

-----  
CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/04/96

| ORAL JUDGEMENT

The petitioners have questioned the legality and validity of the judgment and order passed by the President, Gujarat Revenue Tribunal, in revision application No.TEN. B.A.817/85 decided on 27.11.89 whereby the orders dated 30.8.83 and 7.5.84 of the Deputy Collector and the

Assistant Collector respectively came to be quashed and set aside, by filing this petition under Article 226/227 of the Constitution of India.

2. The petitioners are the purchasers of parcel of lands for their industries from respondents Nos.3 & 4. Respondent No.2, Patel Kachrabhai Prahladbhai was the owner of land bearing block No.1128 admeasuring H.1-09-27 sq. mtrs. of village Bileleshwarpura, Tal: Kalol. He wanted to transfer the land and, therefore, he made an application under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) to the Deputy Collector, Mehsana on 27.8.83 for permission to transfer the said land in favour of respondent No.3 on the ground that the said company wanted to establish an industry on the land in question. The Deputy Collector, Mehsana, after holding an inquiry found that the application was genuine and was required to be granted. He, therefore, granted the application on 30.8.83. The permission was granted by the Deputy Collector on certain conditions. The permission was granted to use the said land for industrial purpose and it was granted in favour of a private limited company, respondent No.3.

3. On account of technical objections by some departments, the status of the transferee company was changed and the promoters of the private limited company, respondent No.3, had given up the idea of floating a private limited company and in turn constituted a partnership firm in the name of Rajkamal Re-rolling and Engineering Company. With the result, the original owner, respondent No.2, made an application for granting permission to the said partnership firm. The Assistant Collector, Mehsana, by his order dated 7.5.84 granted the said application for change in the name of transferee partnership firm. The respondent No.3 became the owner by virtue of registered sale deed dated 6.7.84. Subsequently, the respondent No.3 submitted an application to the Taluka Development Officer, Kalol for converting the said land into non-agricultural use. The Taluka Development Officer after making necessary inquiry, granted the said permission by order dated 16.10.87.

4. The contention of the petitioner is that the respondent No.3 on account of financial stringencies and contingencies transferred the said land for industrial purpose to the petitioners by six different sale deeds executed on 15.6.88. It is also the contention of the petitioner that their names came to be mutated in the record of rights by virtue of mutation entries Nos.463 to

5. Two revisions applications No.816 and 817 of 1985 came to be filed by the State before the Gujarat Revenue Tribunal. It appears that the first revision No.816/85 was filed by the State against the order of the Deputy Collector dated 7.5.84 making necessary change for granting permission in favour of non-agriculturist respondent No.3 firm which came to be rejected on 31.3.88. The second revision application No.817/85 which was filed on the same day came to be allowed on 27.11.89 whereby the order of the Deputy Collector and the Assistant Collector came to be quashed and set aside. It appears that instead of hearing and deciding both the revisions petitions together, the Tribunal, presumably, inadvertently decided the same separately. The order which has been confirmed in the first revision came to be quashed in the second revision. This is really very unusual. Be that as it may, one thing is certain that the petitioners who are the transferees of the lands in question from respondents No.2 & 3 transferors, were not heard before the impugned order of the Gujarat Revenue Tribunal in Revision Application No.817/85 came to be recorded on 27.11.89. It appears from the mechanism and the scheme envisaged under section 84C and 84B that in case of passing any order for violation of the provisions of section 63, or section 64 or any provisions of the Tenancy Act, the concerned Competent Authority is obliged to issue notice in prescribed form to the transferor, transferee and also persons acquiring the land in dispute. Otherwise also, it is a cardinal principal of jurisprudence that no person should be visited with civil consequences without affording an opportunity of hearing. The doctrine of audi alterem partem is not the relic of the past but a living force of the day which is violently breached in not hearing the petitioners while passing the impugned order by the Gujarat Revenue Tribunal.

6. Therefore, considering the entire statutory scheme, keeping in mind the fundamental principles of jurisprudence and the principles of audi alterem partem, this Court has no hesitation in finding that the impugned order recorded by the Gujarat Revenue Tribunal in revision Application No.817/85 on 27.11.89 is illegal and without hearing the petitioners who are affected parties and therefore it is hereby quashed and set aside and the matter is remanded to the Tribunal for fresh hearing after issuing notice to the petitioners and giving them an opportunity of hearing. It will be open for the parties to raise all available legal permissible pleas and defences before the Gujarat Tribunal. The Tribunal

is therefore directed to undergo fresh exercise and decide the matter afresh after hearing all the parties concerned in accordance with law as early as possible. The petition is allowed to the aforesaid extent. Rule is made absolute with no order as to costs.